

CAUSE NO. 16-CV-0080

CAROL CARTER ON BEHALF OF THE §  
ESTATE OF JOHN DAVID CARTER, §

Plaintiff, §

vs. §

ATHENE ANNUITY AND LIFE §  
COMPANY, §

Defendant. §

IN THE DISTRICT COURT

OF GALVESTON COUNTY, TEXAS

405TH JUDICIAL DISTRICT

**DEFENDANT'S NOTICE OF FILING OF NOTICE OF REMOVAL**

Defendant, ATHENE ANNUITY AND LIFE COMPANY (“**Athene**” or “**Defendant**”) hereby files this Notice of Filing of Notice of Removal and in support thereof, avers as follows:

On March 11, 2016, Defendant, Athene Annuity and Life Company, filed a Notice of Removal in the office of the Clerk of the United States District Court for the Southern District of Texas, Galveston Division. Attached as **Exhibit 1** is a copy of the Notice of Removal.

Respectfully submitted,

MATSUSHIMA RENDON & THRASH, PLLC

By: /s/ Alicia M. Matsushima

Alicia M. Matsushima  
State Bar No. 24002546  
440 Louisiana Street, Ste. 900  
Houston, Texas 77002  
713-236-7792 Tel.  
713-588-2418 Fax  
[alicia@mrtpllc.com](mailto:alicia@mrtpllc.com)

ATTORNEY FOR DEFENDANT,  
ATHENE ANNUITY AND LIFE COMPANY

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2016, a true and correct copy of the foregoing instrument was served in accordance with Tex. R. Civ. P. 21 and 21a on the following counsel of record:

Phillip S. Larmond  
State Bar No. 24081834  
Larmon & Wilson, PLLC  
P.O. Box 84422  
Pearland, Texas 77584  
(888) 451-4554 Tel.  
(832) 476-9356 Fax

**ATTORNEY FOR PLAINTIFF, CAROL CARTER ON BEHALF OF THE  
ESTATE OF JOHN DAVID CARTER**

*/s/ Alicia M. Matsushima*

Alicia M. Matsushima

**Exhibit 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
GALVESTON DIVISION

CAROL CARTER ON BEHALF OF THE §  
ESTATE OF JOHN DAVID CARTER, §

Plaintiff, §

vs. §

ATHENE ANNUITY AND LIFE §  
COMPANY, §

Defendant. §

CIVIL ACTION NO. \_\_\_\_\_

**NOTICE OF REMOVAL**

**PLEASE TAKE NOTICE** that Defendant Athene Annuity and Life Company (“**Athene**” or “**Defendant**”) hereby removes this action from the 405th District Court of Galveston County, Texas, to the United States District Court for the Southern District of Texas, Galveston Division, based on diversity jurisdiction pursuant to 28 U.S.C. §§ 1332(a)(1) and 1441(b), for the reasons stated more fully below. Athene files this Notice of Removal under Fed. R. Civ. P. 81(c). In support of this Notice, Athene states:

1. On January 20, 2016, Plaintiff, CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER (“**Carter**” or “**Plaintiff**”) sued Athene in the 405th District Court of Galveston County, Texas, under Cause No. 16-CV-0080.

2. Athene was served through CT Corporation, its registered agent for service, on February 23, 2016. This removal is timely. 28 U.S.C. § 1446(b).

3. Plaintiff is a citizen of the State of Texas. (Petition, ¶ 2.1.)

4. Athene is a corporation organized and existing under the laws of the State of Iowa, and with its principal place of business in West Des Moines, Iowa. (Petition, ¶ 2.2.) Athene is a citizen of the State of Iowa for purposes of diversity jurisdiction.

5. Plaintiff's Complaint seeks recovery of life insurance benefits in the amount of \$150,000, plus treble damages, interest, and attorney's fees. (Petition, ¶¶ 5.1, 5.7, 5.10, 10.1.)

6. This case is properly removable pursuant to 28 U.S.C. § 1441, which provides in pertinent part as follows:

(a) Except as otherwise expressly provided by an Act of Congress, any civil action brought in a state court of which the district courts of the United States have original jurisdiction may be removed by the defendant or the defendants to the district court of the United States for the district and division embracing a place where such action is pending. For purposes of removal under the chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on the claim arising under the Constitution, treaties or laws of the United States shall be removal without regard to citizenship or residences of the parties. Any other action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

7. This action is properly removable under 28 U.S.C. § 1441(a) and (b) because this Court has original jurisdiction of this case under 28 U.S.C. § 1332(a), which provides in pertinent part as follows:

(a) The district courts shall have original jurisdictions of all civil actions when the matter in controversy exceeds the sum or value of \$75,000.00 exclusive of interest and costs, and is between –

1. Citizens of different States.....

8. Removal is proper because there is complete diversity between the parties to this action and the amount in controversy exceeds \$75,000.00.

9. The 405th District Court of Galveston County, Texas is a state court within this judicial district.

10. Athene has heretofore not sought similar relief.

11. As required by 28 U.S.C. § 1445(a), Athene attaches an index and true and correct copies of all executed processes, pleadings that assert causes of action, all signed orders and list of attorneys to this notice as exhibits, all of which are incorporated by reference.

12. As provided by 28 U.S.C. § 1446(d), promptly after the filing of this Notice of Removal, written notice of the filing of this notice will be given to all parties, and a true and correct copy of this notice will be filed with the Clerk of the 405th District Court of Galveston County, Texas.

13. Athene reserves the right to supplement its Notice of Removal by adding any jurisdictional defenses which may independently support a basis for removal. Nothing in this Removal shall be interpreted as a waiver or relinquishment of any of Athene's rights to assert any defense or affirmative matter.

14. Athene respectfully requests that this action be removed from the 405th District Court of Galveston County, Texas to the United States District Court for the Southern District of Texas, Galveston Division, and that this Court enter such further orders as may be necessary and proper.

**WHEREFORE**, Defendant Athene Annuity and Life Company requests that this Court take jurisdiction of this action and issue all necessary orders and processes to remove this action from the 405th District Court of Galveston County, Texas, to the United States District Court for the Southern District of Texas.

Respectfully submitted,

/s/ Alicia M. Matsushima

Alicia M. Matsushima  
Federal I.D. No. 28590  
State Bar No. 24002546  
440 Louisiana Street, Ste. 900  
Houston, Texas 77002  
713-236-7792 Tel.  
713-588-2418 Fax  
[alicia@mrtpllc.com](mailto:alicia@mrtpllc.com)

**ATTORNEY IN CHARGE FOR DEFENDANT,  
ATHENE ANNUITY AND LIFE COMPANY**

OF COUNSEL:

MATSUSHIMA RENDON & THRASH, PLLC  
440 Louisiana Street, Ste. 900  
Houston, Texas 77002  
713-236-7792 Tel.  
713-588-2418 Fax  
[alicia@mrtpllc.com](mailto:alicia@mrtpllc.com)

**CERTIFICATE OF SERVICE**

I hereby certify that on March 11, 2016, a true and correct copy of the foregoing instrument was served via certified mail, return receipt requested on all counsel of record in accordance with Rule 5 of the Federal Rules of Civil Procedure.

/s/ Alicia M. Matsushima

Alicia M. Matsushima

**LIST OF ALL COUNSEL OF RECORD**

1. Alicia M. Matsushima  
Federal I.D. No. 28590  
State Bar No. 24002546  
440 Louisiana Street, Ste. 900  
Houston, Texas 77002  
713-236-7792 Tel.  
713-588-2418 Fax  
[alicia@mrtpllc.com](mailto:alicia@mrtpllc.com)

**ATTORNEY IN CHARGE FOR DEFENDANT, ATHENE ANNUITY AND LIFE COMPANY**

2. Phillip S. Larmond  
State Bar No. 24081834  
Larmond & Wilson, PLLC  
P.O. Box 84422  
Pearland, Texas 77584  
(888) 451-4554 Tel.  
(832) 476-9356 Fax  
[plarmond@larmondandwilson.com](mailto:plarmond@larmondandwilson.com)

**ATTORNEY IN CHARGE FOR PLAINTIFF, CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER**



**INDEX OF STATE COURT FILINGS**

1. Plaintiff's Original Petition filed on January 20, 2016.
2. Citation issued on January 20, 2016 upon Defendant, Athene Annuity and Life Company and return of service on February 23, 2016.
3. Request for Issuance of Service filed January 20, 2016.
4. Case Information Sheet filed January 20, 2016.



**Service of Process  
Transmittal**

02/23/2016

CT Log Number 528700666

**TO:** Linda Olson  
Athene USA Corporation  
7700 Mills Civic Pkwy, Mail Stop 8A-18N  
West Des Moines, IA 50266-3862

**RE: Process Served in Texas**

**FOR:** Athene Annuity and Life Company (Domestic State: IA)

**ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:**

**TITLE OF ACTION:** CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER, Pltf. vs. Athene Annuity and Life Company, Dft.

**DOCUMENT(S) SERVED:** Citation(s), Original Petition, Attachment(s), Letter, Statement

**COURT/AGENCY:** 405th Judicial District Court Galveston County, TX  
Case # 16CV0080

**NATURE OF ACTION:** Insurance Litigation - Claim for policy benefits

**ON WHOM PROCESS WAS SERVED:** C T Corporation System, Dallas, TX

**DATE AND HOUR OF SERVICE:** By Certified Mail on 02/23/2016 postmarked: "Not Post Marked"

**JURISDICTION SERVED :** Texas

**APPEARANCE OR ANSWER DUE:** By 10:00 a.m. on the Monday next after the expiration of 20 days (Document(s) may contain additional answer dates)

**ATTORNEY(S) / SENDER(S):** PHILLIP S. LARMOND  
Larmond & Wilson, PLLC  
P.O. Box 84422  
Pearland,, TX 77584  
888-451-4554

**ACTION ITEMS:** CT has retained the current log, Retain Date: 02/24/2016, Expected Purge Date: 02/29/2016

Image SOP

Email Notification, Linda Olson lolson@athene.com

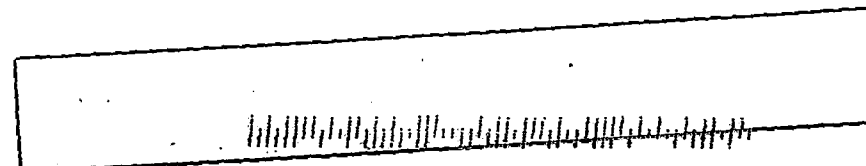
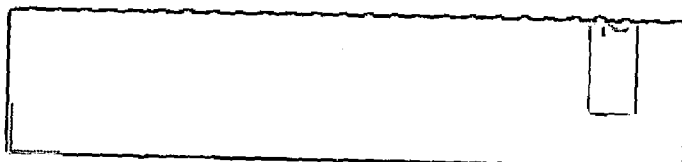
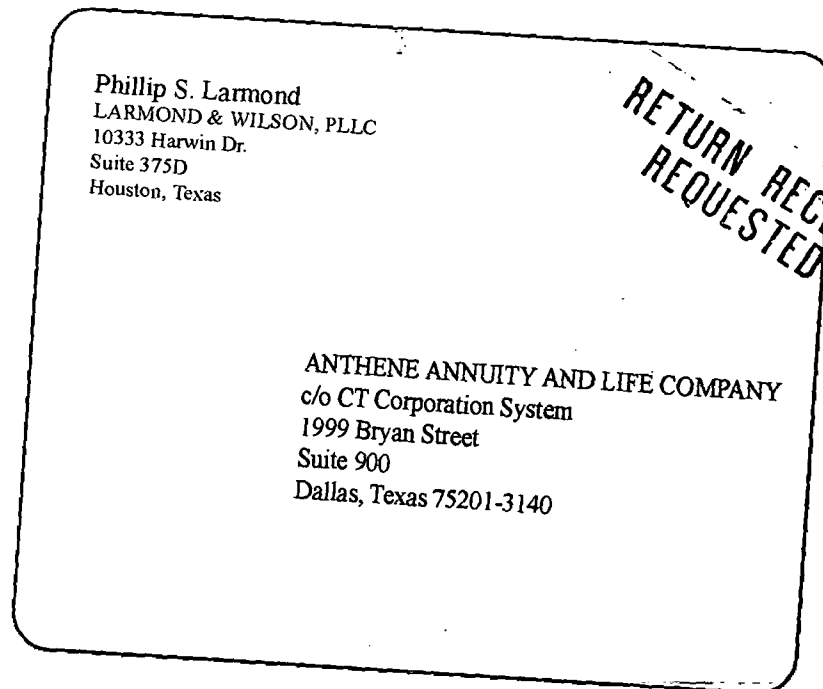
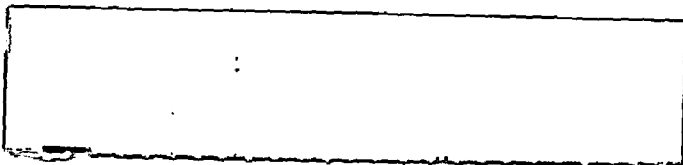
Email Notification, Robin Brown Nelson RBrownNelson@athene.com

Email Notification, Lisa Stephens LStephens@athene.com

**SIGNED:** C T Corporation System

**ADDRESS:** 1999 Bryan St Ste 900  
Dallas, TX 75201-3140

**TELEPHONE:** 214-932-3601



## CITATION

THE STATE OF TEXAS

CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID  
 CARTER VS. ANTHENE ANNUITY AND LIFE COMPANY  
 FORMERLY AVIVA LIFE AND ANNUITY COMPANY

Cause No.: 16-CV-0080

405th District Court of Galveston County

TO: ANTHENE ANNUITY AND LIFE COMPANY  
 c/o Registered Agent C T Corporation System  
 1999 Bryan Street Suite 900  
 Dallas TX 75201-3140

**GREETINGS: YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days from the date you were served this citation and petition/motion, a default judgment may be taken against you.

Said written answer may be filed by mailing same to: District Clerk's Office, 600 59th Street, Suite 4001, Galveston, Texas 77551-2388. The case is presently pending before the **405th District Court** of Galveston County sitting in Galveston, Texas, and the ; **Original Petition - OCA** was filed ; **January 20, 2016**. It bears cause number **16-CV-0080** and see the attached petition/motion for named parties to the suit.

Issued and given under my hand and the seal of said court at Galveston, Texas, on this the **20th day of January, 2016**.

Issued at the request of:  
 Phillip S Larmond  
 Larmond & Wilson PLLC  
 PO Box 84422  
 Pearland TX 77584



John D. Kinard, District Clerk  
 Galveston County, Texas

By:

*Rolande Kain*

Rolande Kain, Deputy

## SEE ATTACHED FORM

**NOTE: Status Conference set: 04/14/2016 at 10:00 AM**

## OFFICER/AUTHORIZED RETURN

Came to hand on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ M. and executed at \_\_\_\_\_ in \_\_\_\_\_ County, Texas, on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_ o'clock \_\_\_\_ m, by delivering to \_\_\_\_\_ in person a true copy of this Citation together with the accompanying \_\_\_\_\_ copy(ies) of the ; Original Petition - OCA attached thereto and I endorsed on said copy of the Citation the date of delivery. To certify which I affix my hand officially this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Fee-Serving: \_\_\_\_\_

Amount: \_\_\_\_\_

\_\_\_\_\_  
 Sheriff/Constable

\_\_\_\_\_  
 County, Texas

BY: \_\_\_\_\_

\_\_\_\_\_  
 Authorized Person/Deputy Signature

On this day personally appeared \_\_\_\_\_, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

Sworn to and subscribed before me, on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
 Notary Public

## CITATION

THE STATE OF TEXAS

CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID  
 CARTER VS. ANTHENE ANNUITY AND LIFE COMPANY  
 FORMERLY AVIVA LIFE AND ANNUITY COMPANY

Cause No.: 16-CV-0080

405th District Court of Galveston County

TO: ANTHENE ANNUITY AND LIFE COMPANY  
 c/o Registered Agent C T Corporation System  
 1999 Bryan Street Suite 900  
 Dallas TX 75201-3140

**GREETINGS: YOU HAVE BEEN SUED.** You may employ an attorney. If you or your attorney do not file a written answer with the Clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days from the date you were served this citation and petition/motion, a default judgment may be taken against you.

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Issued and given under my hand and the seal of said court at Galveston, Texas, on this the 20th day of January, 2016.

Issued at the request of:  
 Phillip S Larmond  
 Larmond & Wilson PLLC  
 PO Box 84422  
 Pearland TX 77584



John D. Kinard, District Clerk  
 Galveston County, Texas

By:

*Rolande Kain*

Rolande Kain, Deputy

## SEE ATTACHED FORM

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Fee-Serving: \_\_\_\_\_

\_\_\_\_\_  
 Sheriff/Constable

Amount: \_\_\_\_\_

\_\_\_\_\_  
 County, Texas

BY: \_\_\_\_\_

\_\_\_\_\_  
 Authorized Person/Deputy Signature

On this day personally appeared \_\_\_\_\_, known to me to be the person whose signature appears on the foregoing return, personally appeared. After being duly sworn by me, he/she stated that this citation was executed by him/her in the exact manner recited on the return.

Sworn to and subscribed before me, on this \_\_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_

\_\_\_\_\_  
 Notary Public

16-CV-0080

CAUSE NO. \_\_\_\_\_

<b>CAROL CARTER ON BEHALF OF THE</b>	§	<b>IN THE DISTRICT COURT OF</b>
<b>ESTATE OF JOHN DAVID CARTER,</b>	§	
	§	
<b>Plaintiff,</b>	§	
	§	
<b>vs.</b>	§	<b>GALVESTON COUNTY, TEXAS</b>
	§	
<b>ANTHENE ANNUITY AND LIFE</b>	§	<b>Galveston County - 405th District Court</b>
<b>COMPANY,</b>	§	
	§	
<b>Defendant.</b>	§	<b>____ JUDICIAL DISTRICT COURT</b>

**PLAINTIFF'S ORIGINAL PETITION AND JURY DEMAND**

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER, by and through his attorney of record, files this action against ATHENE ANNUITY AND LIFE COMPANY FORMERLY AVIVA LIFE AND ANNUITY COMPANY (hereafter referred to as "Defendant") and respectfully urges the following claims:

**1. DISCOVERY CONTROL PLAN**

1.1 Plaintiff requests the discovery in this case be conducted under Level 3, pursuant to TEX. R. CIV. P. 190.3.

**2. PARTIES**

2.1 Plaintiff is CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER, an individual who resides in Houston, Harris County, Texas.

2.2 Defendant, ATHENE ANNUITY AND LIFE COMPANY formerly AVIVA LIFE AND ANNUITY COMPANY, a foreign insurance carrier organized and existing under the laws of the State of Iowa and authorized to conduct business in Texas, may be served with process by

Status Conference set 4/14/16

serving its designated agent for service of process, C T Corporation System, at 1999 Bryan Street Suite 900, Dallas, Texas 75201-3140.

### **3. VENUE**

3.1 Venue for this suit for breach of a written contract is in Galveston County under Texas Civil Practice & Remedies Code § 15.035(a) because this county was identified as the place for an obligation under the contract to be performed.

### **4. FACTUAL BACKGROUND**

4.1 On or about July 30, 2011, John David Carter completed an application for insurance with Defendant.

4.2 Based on the insurance policy sought, Mr. Carter's age, and the death benefit, Chukwudi Egbuonu, Aviva's representative explained to Mr. Carter that he would have to go through a full medical exam. The medical exam would be administered through an independent testing service.

4.3 Based on these representations from Mr. Egbuonu, Mr. Carter did not falsely disclose any information of his prior medical conditions. More importantly, questions 14 – 17 of the Application for Insurance (Exhibit 1) were not required to be completed since a medical exam was required.

4.4 Mr. Carter further relied on the representations that Aviva's underwriting process would include a full medical exam, an extensive review of his<sup>4</sup> medical records, and a urine and blood test.

4.5 Following a blood, urine, and saliva test, Mr. Carter was approved for life insurance by Defendant with no mention of any detection of nicotine. As a result, Mr. Carter was approved a "non-smoker" insurance rating.

4.6 Following Mr. Carter's untimely death Aviva denied the beneficiary's claim for the death benefits under Mr. Carter's life insurance policy. On March 4, 2014, Aviva communicated to Carol Carter that Aviva was rescinding the policy based on material misrepresentations that affected the risk assumed (Exhibit 2). Contrary to Aviva's contentions, Mr. Carter made no such misrepresentations. More importantly, Aviva did not rely on Mr. Carter's representations on the Application of Insurance, instead, it relied on the information obtained through the independent medical exam, the review of Mr. Carter's medical records, and Mr. Carter's blood and urine test. As such, any recession of the contract is improper and Aviva's failure to pay the benefits is a breach of contract.

## **5. CAUSES OF ACTION**

### **Count 1 – Breach of Contract**

5.1 On July 30, 2011, Plaintiff and Defendant executed a valid and enforceable written contract. Plaintiff attaches a copy of the contract as Exhibit A and incorporates it by reference. The contract provided that Defendant would pay the designated beneficiary \$150,000 upon the death of John David Carter, and that Plaintiff would pay the monthly premiums outlined in the contract.

5.2 Defendant breached the contract by failing to pay the death benefits pursuant to the contract on March 4, 2014.

5.3 Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

5.4 Defendant's breach caused injury to Plaintiff, which resulted in Plaintiff's damages.

5.4 Attorney's fees. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code chapter 38 because this suit is for breach of a written contract.



Plaintiff retained counsel, who presented plaintiff's claim to defendant and its duly authorized agent. Defendant did not tender the amount owed within 30 days of when the claim was presented.

Count 2 – Quantum Meruit

5.5 In the alternative to Count 1, Defendant accepted monthly premium payments from Plaintiff without compensating Plaintiff.

5.6 Plaintiff provided the monthly premium payments for Defendant's benefit. Defendant had the luxury to include Plaintiff's payments in its vast insurance and investment portfolio yielding continuous interest on Plaintiff's premium payments.

5.7 Defendant knew or should have known that Plaintiff expected compensation when Defendant accepted the premium payments. Defendant knew that Plaintiff expected a life insurance benefit payout of \$150,000.00 at the death of John David Carter.

5.8 Because Plaintiff expected compensation, Defendant's acceptance of monthly premium payments without payment of the insurance death benefit resulted in Plaintiff's damages.

5.8 Plaintiff seeks unliquidated damages within the jurisdictional limits of this Court.

5.9 Attorney's fees. Plaintiff is entitled to recover reasonable attorney fees under Texas Civil Practice & Remedies Code § 38.001(1)-(3) because this suit is for quantum meruit. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of when the claim was presented.

Count 3 – Promissory Estoppel

5.9 In the alternative to other counts, Defendant made a promise to Plaintiff that Defendant failed to keep.

5.10 Defendant promised Plaintiff that Defendant would tender a death benefit payment of \$150,000.00 at the death of John David Carter.

5.11 Plaintiff relied on Defendant's promise by paying a monthly premium on time every month until his untimely death. Because of the nature of the promise, Plaintiff's reliance was both reasonable and substantial.

5.12 Defendant knew, or reasonably should have known, that Plaintiff would rely on Defendant's promise.

5.13 Injustice to Plaintiff can be avoided only if Defendant's promise is enforced.

5.14 Plaintiff's reliance on Defendant's promise resulted in injury to Plaintiff, which caused Plaintiff damages.

5.15 Attorney's Fees. Plaintiff is entitled to recover reasonable and necessary attorney fees under Texas Civil Practice & Remedies Code § 38.001(8) because this suit is for promissory estoppel. Plaintiff retained counsel, who presented Plaintiff's claim to Defendant. Defendant did not tender the amount owed within 30 days of when the claim was presented.

## **6. JURY DEMAND**

6.1 Plaintiff demands a jury trial and tenders the appropriate fee with this petition.

## **7. CONDITIONS PRECEDENT**

7.1 All conditions precedent to Plaintiff's claim for relief have been performed or have occurred.

## **8. REQUEST FOR DISCLOSURE**

8.1 Under Texas Rule of Civil Procedure 194, Plaintiff request that Defendant disclose, within 50 days of the service of this request, the information or material described in Rule 194.2.

## **9. OBJECTION TO ASSOCIATE JUDGE**

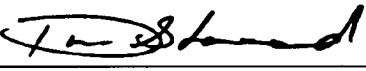
9.1 Plaintiff objects to an associate judge hearing a trial on the merits or presiding at a jury trial.

**10. PRAYER**

10.1 For these reasons, Plaintiff asks that the Court issue citation for Defendant to appear and answer, and that Plaintiff be awarded a judgment against Defendant for the following:

- a. Actual damages;
- b. Treble damages;
- c. Pre-judgment and post-judgment interest;
- d. Court costs;
- e. Attorney's fees; and
- f. All other relief to which Plaintiff is entitled.

Respectfully submitted:  
**Larmond & Wilson, PLLC**  
P.O. Box 84422  
Pearland, Texas 77584  
Phone: (888) 451-4554  
Fax: (832) 476-9356  
Email: [info@larmondandwilson.com](mailto:info@larmondandwilson.com)

By:   
PHILLIP S. LARMOND  
State Bar No. 24081834  
Email: [plarmond@larmondandwilson.com](mailto:plarmond@larmondandwilson.com)  
Attorney for Petitioner

Aviva Life and Annuity Company  
 Home Office: Des Moines, IA  
 Mailing Address  
 P.O. Box 1555  
 Des Moines, IA 50306-1555  
 Fax: 1-800-753-0038



## Application for Insurance

AGENT CODE # Pending

(In this application, "Company" refers to the insurance company named above.)

## APPLICANT INFORMATION

## 1. PROPOSED INSURED

Name (First, Middle, Last) JOHN CARTER Is Insured also the Owner? ☒ Yes ☐ NoAddress 129 MAGNOLIA ESTATES E-Mail \_\_\_\_\_City LEAGUE CITY Home Ph (281) 338-2232 Bus. Ph (\_\_\_\_) \_\_\_\_\_State TX Zip 77573 Gender ☒ M ☐ F Maiden Name \_\_\_\_\_Birth Date 11/1/1959 Birth State CA Social Security Number [REDACTED] 2050Marital Status ☒ Married ☐ Single ☐ Divorced or Separated ☐ Widow or Widower U.S. Citizen? ☒ Yes ☐ No Permanent Resident? ☒ Yes ☐ NoDriver's License # [REDACTED] State TX Issue Date \_\_\_\_\_ Expiry Date \_\_\_\_\_

Or, if you do not have a driver's license, other government issued photo ID. Document Type \_\_\_\_\_

Document # \_\_\_\_\_ Where Issued \_\_\_\_\_ Issue Date \_\_\_\_\_ Expiry Date \_\_\_\_\_

Employer EXPLORE INTERNATIONAL How Long? \_\_\_\_\_ Occupation/Duties SALESAnnual earned income \$ 152K Annual unearned income \$ 7 Net worth \$ 750,000

If multiple life product, (2nd app required for multiple life)

Joint Insured Names (1st) \_\_\_\_\_ (2nd): \_\_\_\_\_

2. OWNER (If different from Proposed Insured) ☐ Individual ☐ Business ☐ Trust (date of trust) \_\_\_\_\_

Name (Owner, Business or Trustee) \_\_\_\_\_ Birth Date \_\_\_\_\_

If trust, name of trust \_\_\_\_\_

Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Relationship to Proposed Insured \_\_\_\_\_ Social Security # or Taxpayer ID # \_\_\_\_\_

Owner's or Trustee's personal driver's license # or other government issued photo ID document, or corporate license

Document Type \_\_\_\_\_ Document # \_\_\_\_\_ Where Issued \_\_\_\_\_ Issue Date \_\_\_\_\_ Expiry Date \_\_\_\_\_

Contingent Owner (If none specified, policy provisions will apply) \_\_\_\_\_

Driver's License # or other government issued photo ID document

Document Type \_\_\_\_\_ Document # \_\_\_\_\_ Where Issued \_\_\_\_\_ Issue Date \_\_\_\_\_ Expiry Date \_\_\_\_\_

Mail notices to ☐ Insured ☐ Owner ☐ Other (specify) \_\_\_\_\_

Other Notice Address \_\_\_\_\_ City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Tax Qualification Type ☐ Qualified Plan ☐ Non-Qualified Plan ☐ NeitherType ☐ Profit Sharing Plan Type ☐ Welfare Benefit Plan☐ 401(k) ☐ single employer☐ 412(i) ☐ multiple employer☐ Other Defined Benefit ☐ VEBA☐ Deferred Comp☐ Split Dollar☐ Executive Bonus☐ Other \_\_\_\_\_

## 3. PRIMARY BENEFICIARY(IES) - Applies to primary insured only. (If trust, complete name and date of trust.)

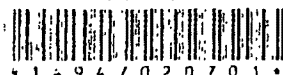
(If necessary, use an additional page for additional details, signature of owner &amp; date.)

CAROL CARTER 25/1952 Spouse 100% [REDACTED] 1195

Print Full Name Birth Date Relationship Percentage Social Security # or Taxpayer ID #

## 4. CONTINGENT BENEFICIARY(IES)

Print Full Name Birth Date Relationship Percentage Social Security # or Taxpayer ID #



114:4300025

**POLICY INFORMATION**

5. **PRIMARY INSURED** ☒ Nonsmoker/Nontobacco ☐ Smoker/Tobacco  
 Base Plan Advantage Builder Series III Amt. of Ins. \$ 150,000  
 Additional Coverage \_\_\_\_\_ Amt. of Ins. \$ \_\_\_\_\_ Premium \$ \_\_\_\_\_  
 Additional Coverage \_\_\_\_\_ Amt. of Ins. \$ \_\_\_\_\_ Premium \$ \_\_\_\_\_  
 Riders (Complete Supplemental Application if applicable)  
☐ Waiver Type \_\_\_\_\_ ☐ Other Riders (Type/Amount): \_\_\_\_\_  
☐ Spouse Rider \$ \_\_\_\_\_ ☐ Child Rider \$ \_\_\_\_\_
6. **UL Death Benefit Option:** ☒ Level ☐ Increasing ☐ Death Benefit Return of Premium Rider  
 Premium Direction/Interest Crediting Strategy: 1 Year Point-to-Point \_\_\_\_\_ % 2 Year Point-to-Point \_\_\_\_\_ % 1 Year Monthly Average \_\_\_\_\_ %  
 1 Year Monthly Cap \_\_\_\_\_ % 1 Year Average Multiple Index \_\_\_\_\_ % 5 Year Fixed Term \_\_\_\_\_ % 1 Year Fixed Term \_\_\_\_\_ %  
 Levelized Strategy Transfer ☐ Yes ☐ No
7. **WHOLE LIFE APL** (If applicable) ☐ Yes ☐ No Direct Recognition (if available) ☐ Yes ☐ No

**PREMIUM INFORMATION**

8. **PREMIUM** Planned Premium \$ 1,195 Additional Premium (Lump Sum) \$ \_\_\_\_\_  
 Billing Frequency ☒ Annual ☐ Semi-Annual ☐ Quarterly ☐ PAC (Complete Authorization) ☐ Other \_\_\_\_\_  
☐ Govt. Allotment (if available) ☐ Group Bill Group Bill # \_\_\_\_\_  
 Has the premium for the policy applied for been given to the agent? ☐ Yes ☒ No Amount \$ \_\_\_\_\_  
 How Paid? ☐ Check ☐ Other (specify) \_\_\_\_\_

**Additional Policy Specifications**

Policy Date (optional) \_\_\_\_\_ Other \_\_\_\_\_

9. Are you financing or refinancing a mortgage and/or a home equity loan or contemplating the use of any kind of mortgage financing strategy in connection with the purchase of or the payment of premiums on the life insurance policy? ☐ Yes ☒ No  
 (If yes, please review and acknowledge by signing the Mortgage Financing Disclosure Statement.)
10. Will you borrow money to pay the premiums for this policy or have someone else pay these premiums for you, in return for you assigning part of or all of the policy values to someone else? ☐ Yes ☒ No (If yes, please review and acknowledge by signing the Premium Financing Applicant Acknowledgement and Disclosure Statement.)

**NON-MEDICAL INFORMATION****11. INSURANCE IN FORCE ON PROPOSED INSURED**

- a. Are any life insurance or annuity contracts in force? ☒ Yes ☐ No  
 If yes, complete section below (Attach separate sheet if necessary)

Company	Amount	WP?	Personal/Business	Year Issued	Replacing?	Amount AOB
New York Life	150,000	No	Personal	2010	No	

- b. Will any annuity or life insurance presently or recently in force be replaced or changed by this policy applied for? ☐ Yes ☒ No
- c. Have you ever been declined, rated, or had coverage modified or withdrawn, or reinstatement declined by any insurance company? ☐ Yes ☒ No
- d. Within the last year, has any other life, health or long term care insurance been issued or applied for, or is any to be applied for? ☐ Yes ☒ No
12. **OTHER NON-MEDICAL INFORMATION**
- a. Do you use any form of tobacco or nicotine based products? ☐ Yes ☒ No  
 If no, have you used any form of tobacco or nicotine based products in the last 5 years? ☐ Yes ☒ No  
 If yes, when did you last use tobacco or nicotine based products? \_\_\_\_\_ Type \_\_\_\_\_ Quantity \_\_\_\_\_
- b. Have you engaged in the last 3 years, or do you intend within the next 12 months to engage:  
 1. In any aviation activity other than as a passenger? ☐ Yes ☒ No  
 2. In ballooning, gliding, boat or vehicle racing, mountain or rock climbing, parachuting, sky diving, underwater diving or any other hazardous sport or activity? ☐ Yes ☒ No
- c. Within the last 5 years, have you filed for bankruptcy (personal or business)? ☐ Yes ☒ No
- d. Within the last 5 years, have you been charged with reckless driving, driving under the influence of alcohol or drugs, or 2 or more moving violations, or had your driver's license revoked or suspended, or received a warning letter? ☐ Yes ☒ No
- e. Have you been arrested for an illegal activity, acquired a criminal record, or are you currently on probation, parole, or under investigation? ☐ Yes ☒ No
- f. Are you a member of or do you contemplate joining one of the Armed Forces or an active or reserve military unit? ☐ Yes ☒ No
- g. Have you in the past 2 years traveled or do you intend to travel or live outside the United States or Canada? ☐ Yes ☒ No
- h. Is any proposed insured, owner or beneficiary a resident or citizen of or an entity organized under the laws of a country other than the U.S.? ☐ Yes ☒ No
- i. Do you intend to sell or transfer all or any portion of this policy to another person, any group of investors or other entity? ☐ Yes ☒ No



Give complete details of any YES answers to questions 11 and 12. (If necessary, use an additional page for additional details, signed by the applicant and dated.) \_\_\_\_\_

### 13. PHYSICIAN INFORMATION

- a. Name, address and phone # of your doctor(s) or health care provider(s) \_\_\_\_\_
- b. When did you last consult a doctor and why? \_\_\_\_\_
- c. What medication(s) (prescribed or over the counter) are you now taking? (If none, so state) \_\_\_\_\_

### MEDICAL INFORMATION If medical exam is required, questions 14-17 do not need to be completed.

#### 14. PROPOSED INSURED

- a. Height in shoes 6 feet 5 inches Weight in clothes 265 pounds
- b. Have you gained or lost more than 10 pounds in the last year? ☐ Yes ☒ No
- c. Are you now under observation or treatment? ☐ Yes ☒ No
- d. Have you ever been diagnosed by a medical professional as having or been treated for AIDS or ARC (AIDS-related complex)? ☐ Yes ☒ No
- e. Have you ever tested positive for antibodies to the AIDS Human T-Cell Lymphotropic (HIV) virus? ☐ Yes ☒ No
- f. Have you ever requested or received a benefit, military deferment, discharge or rejection, payment or pension because of a disability, injury, or sickness? ☐ Yes ☒ No

#### 15. HAVE YOU EVER HAD OR HAVE SYMPTOMS OF OR BEEN TREATED FOR:

- a. Disease of the heart or circulatory system, including high blood pressure, heart attack, coronary artery disease, or chest pain? ☐ Yes ☒ No
- b. Heart murmur, rhythm abnormality, heart catheterization, echocardiogram or an exercise treadmill test? ☐ Yes ☒ No
- c. Cancer, tumors, lymphoma, leukemia, or any growths, lesions, polyps? ☐ Yes ☒ No
- d. Diabetes, thyroid, glandular or endocrinal disorder? ☐ Yes ☒ No
- e. Respiratory disorders including asthma, chronic bronchitis, emphysema, pneumonia, shortness of breath, or abnormal chest x-ray? ☐ Yes ☒ No
- f. Disorder of the stomach, liver, pancreas or intestinal tract, including ulcerative colitis, Crohn's disease, or cirrhosis? ☐ Yes ☒ No
- g. Disorder of the kidneys, prostate, bladder, reproductive organs, sexually transmitted diseases, sugar, albumin or blood in urine? ☐ Yes ☒ No
- h. Stroke, transient ischemic attack (TIA), Parkinson's, multiple sclerosis, seizures, epilepsy, chronic headaches, memory changes or fainting? ☐ Yes ☒ No
- i. Anxiety, depression, attempted suicide, attention deficit disorder or psychosis, mental or nervous system disorder? ☐ Yes ☒ No
- j. Anemia, hepatitis, or any blood disorder? ☐ Yes ☒ No
- k. Chronic back pain, arthritis, loss of limb, paralysis, muscle weakness or disease? ☐ Yes ☒ No

#### 16. WITHIN THE LAST FIVE YEARS, OTHER THAN AS NOTED ABOVE, HAVE YOU:

- a. Seen a doctor, health care provider, counselor, therapist, or had any illness, injury, surgery, diagnostic test or treatment, or been advised to have any diagnostic test, surgery or treatment not yet completed? ☐ Yes ☒ No
- b. Been a patient of a clinic or hospital emergency room, or had any diagnostic test that was not normal? ☐ Yes ☒ No
- c. Used any drug, narcotic or controlled substance not prescribed by a physician, or been arrested, counseled, treated, or participated in a support group because of alcohol, controlled substance or drug use? ☐ Yes ☒ No
- d. Do you currently use alcoholic beverages? ☐ Yes ☒ No
- If yes, what is the average number of drinks per day? ☐ 2 or less ☐ 3-5 ☐ 6 or more.

#### 17. FAMILY HISTORY

- a. Is there a family history of diabetes, cancer, heart disease, mental illness, or any hereditary disorders? ☐ Yes ☒ No
- b. Family information (natural parents, brothers, sisters):

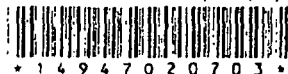
Family Member	Age if Living	Age at Death	Cause of Death
Father			
Brother(s)			

Family Member	Age if Living	Age at Death	Cause of Death
Mother			
Sister(s)			

Give complete details of any YES answers to questions 14 through 17 (If necessary, use an additional page for additional details, signed by the applicant & dated.) \_\_\_\_\_

Question Number	Date	Details, Include Diagnosis, Treatment, Duration, Result	Name, Address and Phone Number of Doctor / Medical Facility

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit, or knowingly presents false information in an application for insurance may be guilty of a crime and subject to fines and confinement in prison, depending on state law



**TAXPAYER IDENTIFICATION**

Instructions (Section references are to the Internal Revenue Code )

Use this form to report the taxpayer identification number (TIN) of the policy owner.

Payors must generally withhold a specified percentage of taxable interest, dividend, and certain other payments if you fail to furnish payors with the correct taxpayer identification number (this is referred to as backup withholding). For most individual taxpayers, the taxpayer identification number is the social security number.

To prevent backup withholding on these payments, be sure to notify payors of the correct taxpayer identification number and properly certify that you are not subject to backup withholding under Section 3406(a)(1)(C).

Use this area to certify that the taxpayer identification number you are giving the payor is correct and that you are not subject to backup withholding.

**Backup Withholding** - You are subject to backup withholding if

- (1) You fail to furnish your taxpayer identification number to the payor; OR
- (2) The Internal Revenue Service (IRS) notifies the payor that you furnished an incorrect taxpayer identification number; OR
- (3) You are notified that you are subject to backup withholding (under Section 3406(a)(1)(C)); OR
- (4) For an interest or dividend account opened after December 31, 1983, you fail to certify to the payor that you are not subject to backup withholding under (3) above, or fail to certify your taxpayer identification number.

**Payees Exempt From Backup Withholding** - Certain payees, such as corporations, government agencies, etc. may be exempt from backup withholding.

**What Number to Give the Payor** - Give the social security number or employer identification number of the record owner of the account. If the account belongs to you as an individual, give your social security number. If the account is owned by a corporation, give the employer identification number of the corporation.

**Obtaining a Number** - If you don't have a taxpayer identification number or you don't know your number, obtain Form SS-5, Application for a Social Security Number Card, or Form SS-4, Application for Employer Identification Number, at the local office of the Social Security Administration or the Internal Revenue Service and apply for a number. Write "applied for" in place of your number. When you get a number, submit a new Form W-9 to the payor.

**AGREEMENTS AND REPRESENTATIONS**

It is hereby represented that the answers and statements on the application(s) and any Supplements required are complete, true and correctly recorded. Information not recorded on the application(s) and any Supplements will not be treated as known to the Company. A copy of the application(s) and any Supplements shall be a part of the policy, and it is agreed that the policy and copy of the application(s) and any Supplements constitute the entire contract. No changes will be made unless the owner agrees and the change is authorized in writing by an officer of the Company.

If a Conditional Life Insurance Agreement was delivered in consideration of the payment of the first premium and is in effect, its terms will apply. Otherwise the policy will take effect and coverage will begin on the issue date specified in the policy if the full first premium is paid, the Proposed Insured(s) is (are) living, and the answers and statements in the application(s) and any Supplements continue to be complete and true at the time of delivery of the policy.

Under penalties of perjury, I certify that (1) the social security or federal tax identification number shown on page 1 of this application for me as the owner of this policy is my correct taxpayer identification number, AND (2) I am a U.S. person (including a U.S. resident alien), AND (3) I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding. NOTE: You must cross out item 3 in the above certification if you have been notified by the IRS that you are currently subject to backup withholding. The IRS does not require your consent to any provision of this document other than the certifications required to avoid backup withholding.

**IMPORTANT INFORMATION ABOUT THE USA PATRIOT ACT**

To help fight the funding of terrorism and money-laundering activities, the U.S. government has passed the USA PATRIOT Act, which requires financial institutions to obtain, verify and record information that identifies persons who engage in certain transactions with or through a financial institution, including insurance companies. This means that the Company will need to verify the name, residential or street address (no P.O. Boxes), date of birth and social security number, drivers license and/or other identification information of all policy owners as may be required by law.





**AUTHORIZATION AND ACKNOWLEDGMENT**

This authorization complies with the HIPAA Privacy Rule. I understand that if I refuse to sign this authorization, the Company may not be able to process my application for life insurance. I acknowledge that I have the right to request and receive a copy of this authorization.

**Personal Health Information**

I authorize any physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, health care provider, health plan, insurer, and/or any other entity subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) that has provided treatment, services, payment, or coverage to me within the past 10 years to disclose my entire medical record and any other protected health information concerning me to the Company, its agents, employees, representatives, insurance support organizations, and reinsurers ("the Company"). Protected health information includes but is not limited to: hospital records, treatment records/office notes, consultation reports, workers' compensation information, diagnosis, prescriptions, and test results. It also includes information concerning the diagnosis or treatment of Human Immunodeficiency Virus (HIV) infection and sexually transmitted diseases, and information on the diagnosis and treatment of mental illness and the use of alcohol, drugs, and tobacco, but excludes psychotherapy notes.

By my signature, I acknowledge that any agreements I have made to restrict my protected health information do not apply to this authorization and I instruct any physician, health care professional, hospital, clinic, laboratory, pharmacy, medical facility, health care provider, health plan, insurer, and/or other entity subject to HIPAA to release and disclose such information without restriction.

I understand that, unless prohibited by state and/or federal law, the protected health information is to be disclosed under this authorization so that the Company may 1) underwrite my application for coverage, make eligibility, risk rating, policy issuance and enrollment determinations; 2) obtain reinsurance; 3) administer claims and determine or fulfill responsibility for coverage and provision of benefits; 4) administer coverage; and 5) conduct other legally permissible activities that relate to any coverage I have, have applied for, or may in the future apply for with the Company. I understand any information disclosed under this authorization may no longer be covered by federal rules governing privacy and confidentiality of health information and may be subject to re-disclosure.

**Personal Private Information**

I understand that an investigative consumer report may be prepared in connection with this application. I authorize any consumer reporting organization or employer having non-medical information about me to release such information to the Company, its reinsurers, or its authorized representatives. I authorize the Company to prepare an investigative consumer report. I understand that I may request to be personally interviewed if an investigative consumer report is prepared in connection with this application and not to have personal information disclosed for marketing purposes. Any information obtained will not be released by the Company, its reinsurers, or representatives to any person or organization except to reinsuring companies, the Medical Information Bureau, or other persons or organizations performing business or legal services in connection with my application, claim, as may be permitted or required by law, or as I may further authorize.

**Limitations, Revocation and Rights**

This authorization shall remain in force for 24 months following the date of my signature below, and a copy of this authorization is as valid as the original. I understand that I have the right to revoke this authorization at any time. The request for revocation must be in writing and sent to the attention of the Underwriting Department of the Company. I understand that a revocation is not effective to the extent that the Company has already relied on this authorization or to the extent that the Company has a legal right to contest a claim under an insurance policy or to contest the policy itself. Such revocation shall not apply to any use or disclosure of my protected health information specifically allowed without authorization by HIPAA and no action relating to this authorization shall be construed as creating any restriction on the uses that HIPAA allows without my authorization.

**SIGNATURES**

I have reviewed and understand the information contained above in the "Taxpayer Identification", "Agreements and Representations", including reviewing the answers and statements on the application(s) and any Supplements for accuracy, "Important Information About the USA Patriot Act", and "Authorization and Acknowledgment" sections, and further acknowledge receipt of the Disclosure Notice to Proposed Insured.

I understand, acknowledge and agree that the Agent has no authority to make any promise, representation or waiver regarding coverage or the terms of the policy. I also understand, acknowledge and agree that the Agent has no authority to provide any legal or tax advice on behalf of the Company. If any such legal or tax advice has been given, I understand, acknowledge and agree it has been done without Company authority and has not been given on behalf of the Company. I understand, acknowledge and agree that I am responsible for obtaining independent legal or tax advice with respect to any such matters. I understand, acknowledge and agree that all premium payments shall be provided directly to the Company and that the Agent has no authority to receive, transmit, sign, endorse, deposit or process any subsequent payments made on the policy.

Signed / Dated at LAKE CITY, TN  
City, State

[Signature]  
Signature of Owner/Proposed Insured  
(or signature of Insured's Personal Representative)

On 7 30 2011

Date

[Signature]  
Signature of Owner if other than Proposed Insured

[Signature]  
Signature of Licensed Agent

Parent/Guardian or Witness (if required)

If Owner is a corporation, business firm or trust, give full name and an Authorized person must sign and provide title

If you are the Proposed Insured's Personal Representative, describe the scope and/or basis of your authority to act on the Proposed Insured's behalf





Aviva Life and Annuity Company  
Mail correspondence to: P.O. Box 1555 Des Moines IA 50306-1555  
Customer Contact Center Tel: 800 800 9882 Fax: 800 531 0038

Aviva Life and Annuity Company of New York  
Home Office: Melville NY

March 4, 2014

Carol A. Carter  
129 Magnolia Estates Drive  
League City, Texas 77573

Decedent: John Carter  
Policy#IL02254390

Dear Ms. Carter:

We have reviewed the claim submitted for death benefits under the above-referenced policy. As provided under this contract and applicable state law, we have conducted a review to confirm the accuracy of the information provided during the application process.

The policy contains an incontestability provision. The provision provides the Company with the right to rescind (cancel) the policy if, within two years of issue, death occurs and material misrepresentations were made at the time of application that affected the risk we assumed. In other words, if the information provided was incomplete or inaccurate, and, if disclosed, would have resulted in a different decision regarding the issuance of coverage, we have the right to rescind the policy. Rescission results in a refund of the premiums paid and the policy is treated as if it were never issued making it null and void.

John Carter completed the Application for Insurance on July 30, 2011. On the Application for Insurance, Mr. Carter stated "No" to question 12a, "do you use any form of tobacco or nicotine based products." Mr. Carter further stated "No" to questions 15a and 16b, "have you ever had or have symptoms of or been treated for disease of the heart or circulatory system, including high blood pressure, heart attack, coronary artery disease, or chest pain, heart murmur, rhythm abnormality, heart catheterization, echocardiogram or an exercise treadmill test?" In addition, Mr. Carter stated "No" to questions 16a and 16b, "within the last five years, have you seen a doctor, health care provider, counselor, therapist, or had any illness, injury, surgery, diagnostic test or treatment, been a patient in a clinic or hospital emergency room or had any diagnostic test that was abnormal?"

We obtained medical records that were inconsistent with Mr. Carter's responses including records from Dr. Pamela Daphnis, his primary medical provider, which state that Mr. Carter told Dr. Daphnis on January 9, 2013, that he had just recently stopped smoking and that he had a prior myocardial infarction. We also obtained medical records from M.D. Anderson Cancer Center from a treatment date of April 14, 2013, in which Mr. Carter noted he had a heart attack in 2001. According to the records, Mr. Carter also stated that he suffers from hyperlipidemia and kidney stones, and that he has had treatment for these problems until two years prior. He also stated that he started smoking one pack of cigarettes a day at age sixteen and stopped one month prior to his medical appointment.



Aviva Life and Annuity Company  
Mail correspondence to: P.O. Box 1555 Des Moines IA 50306-1555  
Customer Contact Center Tel: 800 800 9882 Fax: 800 531 0038

Aviva Life and Annuity Company of New York  
Home Office: Melville NY

This undisclosed information is material to the risk insured under the policy. Therefore, the company is exercising its right to rescind the policy and will refund any premiums paid.

We will send to you under separate cover our check payable to the Estate of John Carter, which will represent a refund of the premiums paid, plus interest. The cashing of this check will constitute acknowledgment of the rescission of this policy and will fully release the Company from further liability under this policy.

We reserve the right to identify further grounds for the rescission of this policy if additional undisclosed material information, including but not limited to either financial or medical, is discovered by or becomes available to the Company. We express our condolences during this difficult time and if you have any questions, or additional information for us to consider, please feel free to contact us for further review.

Sincerely,

A handwritten signature in cursive script that reads "Sheila Burton".

Sheila Burton  
Director, Customer Service

**Notice:** If this case is filed as an expedited action pursuant to Rule 169 of the Texas Rules of Civil Procedure, please contact the Court to advise of the same as soon as possible

## THE DISTRICT COURTS OF GALVESTON COUNTY CIVIL CASE INFORMATION STATEMENT

The case Information Statement is for administrative purposes only. It shall be filed with the Parties Original Pleadings and shall be served upon all other parties to the action. All Status Conferences will be set for Thursdays following 90 days from the date of filing according to each Courts scheduled times

<b>10<sup>th</sup> District Court – 9:00 A.M.</b>	<b>212<sup>th</sup> District Court – 9:00 A.M.</b>
<b>56<sup>th</sup> District Court – 9:30 A.M.</b>	<b>405<sup>th</sup> District Court – 10:00 A.M.</b>
<b>122<sup>nd</sup> District Court – 9:30 A.M.</b>	

**Notice of Status Conference Setting: Please calendar this event**

**Date: 04/14/2016 set in the 405th District Court District Court**

Case Number: 16-CV-0080

Case Style: CAROL CARTER ON BEHALF OF THE ESTATE OF JOHN DAVID CARTER v  
ANTHENE ANNUITY AND LIFE COMPANY FORMERLY AVIVA LIFE AND  
ANNUITY COMPANY

Case Type: Contract - Other

### Name of Primary Attorney filing this form

### Name of Opposing Attorney, if known

Attorney Name	Attorney Name
Attorney Bar No.	Attorney Bar No.
Attorney Address	Attorney Address
Attorney Phone No. _____	Attorney Phone No. _____
Attorney Fax No.	Attorney Fax No.

Briefly describe the case, including special characteristics that may warrant extended discovery or accelerated disposition.

If discovery **LEVEL 3** is requested, explain why. Attach additional sheets, if necessary.

Estimated time for discovery \_\_\_\_\_

Estimated trial time \_\_\_\_\_

Do you presently anticipate adding any parties? \_\_\_\_\_

If so when? \_\_\_\_\_

**Level Assignment Preferred: (please check one)**

<b>Level 1</b>	<b>Level 2</b>	<b>Level 3</b>
<b>\$50,000 or less</b>	<b>All Other Cases</b>	<b>Court Order Only</b>

Is this case suitable for ADR? (yes or no) \_\_\_\_\_ ADR Method? \_\_\_\_\_

Signature of Attorney \_\_\_\_\_ Date signed \_\_\_\_\_

Printed Name of Attorney: \_\_\_\_\_



**JOHN D. KINARD**

**DISTRICT CLERK GALVESTON COUNTY**

Galveston County - 405th District Court

16-CV-0080

**REQUEST FOR ISSUANCE OF SERVICE**

Carol Carter on Behalf of the Estate of  
John David Carter

Case Number:

Court Description:

vs

Name(s) of Documents to be served: Petition with Exhibits

Anthene Annuity and Life Company

**SERVICE TO BE ISSUED ON (Please list exactly as the name appears in the pleading to be served)**

Issue Service To: Athene Annuity and Life Company

Address of Service: 1999 Bryan Street, Suite 900

City, State & Zip: Dallas, Texas 75201-3140

Agent (IF APPLICABLE) CT Corporation Stytem

**TYPE OF SERVICE TO BE ISSUED:**

- |   |  |  |  |
|---|--|--|--|
| <input checked="" type="checkbox"/> Citation            | <input type="checkbox"/> Citation by Posting   | <input type="checkbox"/> Citation by Publication | <input type="checkbox"/> Citation Rule 106 Service   |
| <input type="checkbox"/> Temporary Restraining Order    | <input type="checkbox"/> Precept               | <input type="checkbox"/> Notice                  | <input type="checkbox"/> Secretary of State Citation |
| <input type="checkbox"/> Protective Order               | <input type="checkbox"/> Citation Scire Facias | <input type="checkbox"/> Attachment              | <input type="checkbox"/> Certiorari                  |
| <input type="checkbox"/> Garnishment                    | <input type="checkbox"/> Habeas Corpus         | <input type="checkbox"/> Injunction              | <input type="checkbox"/> Sequestration               |
| <input type="checkbox"/> Subpoena                       |  |  |  |
| <input type="checkbox"/> Other (Please Describe): _____ |  |  |  |

***All service fees for Sheriff and Constable are collected by the clerk of court at the time of request.***

**UPON ISSUANCE OF SERVICE: (CHECK ONE ONLY)**

- |   |  |
|---|--|
| <input type="checkbox"/> Send to Sheriff  |  |
| <input type="checkbox"/> Galveston County Constable Name and Address                                  | _____  |
| <input type="checkbox"/> Civil Process Server (Include the name of the Authorized Person to pick-up): | _____  |
| <input type="checkbox"/> Call attorney for pick up (Phone Number):                                    | _____  |
| <input checked="" type="checkbox"/> Mail to attorney at:  | 10333 Harwin Drive, Suite 375D, Houston, Texas 77036 |
| <input type="checkbox"/> Email Service to:  | _____  |
| <input type="checkbox"/> District Clerk serve by certified mail                                       | _____  |
| <input type="checkbox"/> Send to League City  |  |

**ISSUANCE OF SERVICE REQUESTED BY:**

Attorney/Party Name: Attorney Phillip S. Larmond

Phone Number: 1 (800) 451-4554

Email Address: plarmond@larmondandwilson.com


CAUSE NUMBER (FOR CLERK USE ONLY):

COURT (FOR CLERK USE ONLY):

STYLED **Carol Carter on Behalf of the Estate of John David Carter vs. Anthene Annuity and Life Company**

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:		Person or entity completing sheet is:
Name:	Email:	Plaintiff(s)/Petitioner(s):		<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner
<b>Phillip S Larmond</b>	<b>plarmond@larmondandwilson.com</b>	<b>Carol Carter on Behalf of the Estate of John David Carter</b>		<input type="checkbox"/> Pro Se Plaintiff/Petitioner
Address:	Telephone:	Defendant(s)/Respondent(s):		<input type="checkbox"/> Title IV-D Agency
<b>10333 Harwin Dr., Suite 375D</b>	<b>1(888) 451-4554</b>	<b>Anthene Annuity and Life Company</b>		<input type="checkbox"/> Other: _____
City/State/Zip:	Fax:			Additional Parties in Child Support Case:
<b>Houston, Texas 77036</b>	<b>(832) 471-9356</b>			Custodial Parent: _____
Signature:	State Bar No:			Non-Custodial Parent: _____
	<b>24081834</b>			Presumed Father: _____
		[Attach additional page as necessary to list all parties]		
2. Indicate case type, or identify the most important issue in the case (select only 1):				
Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<i>Debt/Contract</i> <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____  <i>Foreclosure</i> <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input checked="" type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____  <b>Related to Criminal Matters</b> <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children  <b>Other Family Law</b> <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other <b>Title IV-D</b> <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocals (UIFSA) <input type="checkbox"/> Support Order  <b>Parent-Child Relationship</b> <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment	Other Civil			
<input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	<input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax	Probate & Mental Health			
<input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	<i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			
3. Indicate procedure or remedy, if applicable (may select more than 1):				
<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action		<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment		<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
4. Indicate damages sought (do not select if it is a family law case):				
<input type="checkbox"/> Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees <input type="checkbox"/> Less than \$100,000 and non-monetary relief <input type="checkbox"/> Over \$100,000 but not more than \$200,000 <input checked="" type="checkbox"/> Over \$200,000 but not more than \$1,000,000 <input type="checkbox"/> Over \$1,000,000				